

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. BURNHART,
Plaintiff,

v.

DEPARTMENT OF CORRECTION ELDON
VAIL,
Defendant.

Case No. C08-5204RJB-KLS

REPORT AND
RECOMMENDATION

Noted for August 1, 2008

Plaintiff is a state prisoner currently incarcerated at the Washington Corrections Center, located in Shelton, Washington. This matter is before the Court on plaintiff's failure to respond, and therefore comply with the undersigned's order to show cause. (Dkt. #5). After reviewing the record, the undersigned submits the following report and recommendation, recommending the Court dismiss this action for failure to comply with the undersigned's order.

DISCUSSION

On April 8, 2008, the undersigned issued an order finding plaintiff's original complaint (Dkt. #4) to be deficient, and directing plaintiff to file by no later than May 8, 2008, an amended complaint curing, if possible, those deficiencies, or show cause why this matter should not be dismissed (Dkt. #5). On May 2, 2008, plaintiff filed a motion requesting an extension of time until July 25, 2008, in which to respond to the undersigned's order to show cause, stating that he did not receive a copy of that order until April 28, 2008, and thus there was "no possible way" he could file a timely response. (Dkt. #6).

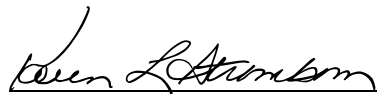
1 On May 13, 2008, the undersigned found plaintiff's request for an extension of time to not be
2 unreasonable. (Dkt. #7). However, given that plaintiff already had a copy of the order to show cause, and
3 that he had been in possession thereof for a period of two weeks, the undersigned found a 30-day
4 extension of time to be sufficient. Accordingly, plaintiff was granted until no later than June 12, 2008, in
5 which to file a response to the undersigned's order to show cause. To date, though, no such response or
6 other communication has been received, and plaintiff's complaint remains deficient for the reasons set
7 forth in that order to show cause.

8 CONCLUSION

9 Because plaintiff has failed to respond to the undersigned's order to show cause (Dkt. #5), and
10 because his complaint remains deficient for the reasons set forth therein, the Court should dismiss that
11 complaint prior to service with prejudice and as frivolous pursuant to 28 U.S.C. §1915(e)

12 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 72(b),
13 the parties shall have ten (10) days from service of this Report and Recommendation to file written
14 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
15 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
16 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **August 1,**
17 **2008**, as noted in the caption.

18 DATED this 8th day of July, 2008.

19
20
21 

22 Karen L. Strombom
23 United States Magistrate Judge
24
25
26
27
28